DEPARTMENT OF STATE REVENUE

42-20200336.LOF

Letter of Findings: 42-20200336
International Fuel Tax Agreement (IFTA) Assessment
For the Year 2018

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier provided sufficient information warranting adjusting an assessment of additional IFTA tax reflecting exempt fuel used in "reefer" vehicles and adjusting the assessment to impose tax only for the specific period in which vehicles were leased or rented to Motor Carrier.

ISSUE

I. International Fuel Tax Agreement Tax - Tax, Interest, and Penalty.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-14(a); IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-10-2.1(a); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.,* 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue,* 867 N.E.2d 289 (Ind. Tax Ct. 2007); 45 IAC 15-11-2; IFTA Articles of Agreement, § R245; IFTA Articles of Agreement, § R510.100; IFTA Articles of Agreement, § R510.200; IFTA Articles of Agreement, § R1220.100; IFTA Articles of Agreement, § R1260.100; IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530 (2017); IFTA Procedures Manual, § P550 (2017); International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/.

STATEMENT OF FACTS

Taxpayer is an Indiana dedicated freight hauler for another company. Taxpayer transports LTL (less-than-truckload), refrigerated trucking, mass merchant, confectionary shipping, warehousing, and general freight. On occasion, when their dedicated customer did not require Taxpayer's exclusive services, Taxpayer would contract various third-party brokers to haul general freight loads.

Some publicly available information indicates that Taxpayer operates over 100 "power units" and has approximately 140 drivers.

Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA"). The Indiana Department of Revenue ("Department") conducted an IFTA audit, which resulted in the assessment of additional 2018 IFTA taxes. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayer disagreed with the IFTA assessment on the ground that the assessment was overstated and should be reduced. Taxpayer submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representatives explained the basis for its protest. This Letter of Findings results.

I. International Fuel Tax Agreement Tax - Tax, Interest, and Penalty.

DISCUSSION

A. Indiana's IFTA Audit Findings.

The IFTA tax assessment was attributable to the Department's finding that Taxpayer's "records presented for audit were not compliant and . . . rated as inadequate." The audit report noted that the records were inadequate and noncompliant for the following reasons:

[Taxpayer] did not utilize internal controls. Distance records were not maintained, and fuel records did not

> have any internal controls. [Taxpayer] did not have processes in place to ensure that vehicle travel was accurately recorded and verified. [Taxpayer] stated that they had a process in place to summarize third party fuel statements' vehicle fuel; however, [Taxpayer] did not save these summaries in order to support and verify their reported figures. [Taxpayer] did not completed a by unit [miles-per-gallon] [a]nalysis to ensure all vehicles were accurately tracked and reported.

The audit report also noted that Taxpayer purchased fuel in jurisdictions for which it did not report mileage. Therefore, the "audited fuel for these jurisdictions was multiplied by the statutory MPG (4.00) for [2018] to calculate jurisdictional distance."

The audit also assessed tax because "[t]here were more vehicles present on the third-party fuel statements than were reported; therefore, additional fuel was identified and additional distance needed to be calculated."

The audit report indicated that Taxpayer obtained 400 IFTA decals during November 2017 and 2018. In addition, the audit noted a substantial discrepancy between the "distance summary vehicle count" and the "fuel statement vehicle count." Accordingly, the audit found:

> There were more vehicles present on the third-party fuel statements than were reported; therefore additional fuel was identified and additional distance needed to be calculated. [Taxpayer] did not have distance records for the audit period or provide updated distance summaries or explanations for the vehicles present on each quarterly fuel statement.

Because of the missing records and because Taxpayer purportedly did not report distance traveled and fuel consumed by additional vehicles, the audit assessed additional tax as follows:

> The fuel audit resulted in increased fuel for vehicles that did not have distances on the summaries. This resulted in calculated fleet MPGs outside acceptable ranges. The use of the statutory 4.00 MPG was applied in all quarters of the audit period.

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately apportion the proper amount of tax owed the various member jurisdictions in which Taxpayer's vehicles traveled during 2018.

As a result, and based upon the limited information available, the Department concluded that Taxpayer owed approximately $1.5 million dollars in additional IFTA tax. Along with that fuel tax, the Department also assessed approximately $200,000 in interest and $150,000 in penalties.

1. Taxpayer's Burden of Establishing That the IFTA Assessment Should be Reduced.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed tax, interest, or penalty assessments are incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In addition, tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id*. The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

2. IFTA's Reporting Requirements and Taxpayer's Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and certain Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/ (last visited March 25, 2021). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated multiple vehicles in Indiana. As such, it operated on Indiana highways and consumed motor

fuel while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

The Department here will not dwell on this point but as an Indiana licensee, Taxpayer is subject to the specific, detailed reporting requirements under the IFTA.

According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

> The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate. (**Emphasis added**).

In addition, the IFTA Procedures Manual at § P550.100 (2017) imposes upon IFTA licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

> The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record keeping requirements of is maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part that:

> A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. **A licensee must preserve all fuel and distance records** for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction. (**Emphasis added**).

Exercising its authority and responsibility as the Taxpayer's chosen base jurisdiction, the Department assessed the additional IFTA tax, penalty, and interest.

3. Taxpayer's Objections the IFTA Assessment and Request to Abate that Assessment.

Taxpayer argues that the assessment was overstated on multiple grounds. Taxpayer stated that it purchased exempt fuel for use in the supply tank of refrigerated trailers used to transport perishables and other temperature-sensitive goods ("reefers"). Taxpayer cites to IFTA Articles of Agreement, § R245 (2017) which defines those "qualified vehicles" which are subject to the tax. The specific provisions provides:

> Qualified Motor Vehicle means a motor vehicle used, designed, or maintained for transportation of persons or property and:
> .100 Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or
> .200 Having three or more axles regardless of weight; or
> .300 Is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight. Qualified Motor Vehicle does not include recreational vehicles.

According to Taxpayer, because the reefers are cooling units and not qualified vehicles, fuel consumed by the reefers is not subject to IFTA tax.

Taxpayer also argues that the Department's audit overstated the amount of fuel consumed in rental trucks. As Taxpayer explains, "IFTA reporting responsibility falls on the lessee of the short-term rental truck only if the rental agreement specifically assigns reporting for the rental truck directly to the truck lessee." Taxpayer cites to IFTA

Articles of Agreement, § R510.100 (2017) which provides:

> In the case of a short-term motor vehicle rental, by a lessor regularly engaged in the business of leasing, or renting motor vehicles without drivers, for compensation to licensees or other lessees of 29 days or less, the lessor will report and pay the fuel use tax unless the following two conditions are met:
> .005 The lessor has a written rental contract which designates the lessee as the party responsible for reporting and paying the fuel use tax; and
> .010 The lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.

In addition, Taxpayer claims that the Department's audit assessed tax based on fuel consumed by trucks utilized under the terms of "long-term" leases. Taxpayer explains, "[I]t appears some of the third-party lease trucks may have been included in the audited MPG calculations for the entire 12-month audit period rather than just for the respective months as determined by the lease beginning and ending period for the truck." Further, Taxpayer states that some of the long-term lease trucks were leased for less than one year and that the assessment should be adjusted to reflect fuel consumed for the period in which the lease was in effect. Taxpayer cites as authority IFTA Articles of Agreement, § R510.200 (2017) which provides:

> Long-Term Leases. A lessor regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee, and such lessor may be issued a license if an application has been properly filed and approved by the base jurisdiction.

Finally, Taxpayer argues that the assessment should be adjusted to reflect the fact that "fleet records pertinent to the audit period . . . were damaged in a sewer leak."

4. Department's Analysis and Results.

After reviewing Taxpayer's documentation and considering its objections, the Department agrees in part to adjust the assessment in the following instances.

The Department agrees to remove the fuel and distance calculations for the reefer units because fuel consumed is exempt under IFTA Articles of Agreement, § R245 (2017).

The Department agrees with Taxpayer's reliance on IFTA Articles of Agreement, § R510.100 ((2017) and agrees to calculate the distance of leased vehicles based upon the dates in which the lease was in effect and not the entire quarter in which the lease period took place.

The Department notes Taxpayer's reliance on IFTA Articles of Agreement, § R510.200 (2017). The Department agrees to remove the rental vehicles from the distance calculations along with the fuel from the audited "tax paid" gallons because the Taxpayer provided a letter from the lessor taking responsibility for reporting the distance and fuel for those vehicles.

However, the Department notes that based upon the information provided subsequent to the audit, the Department will include company owned vehicles because no fuel receipts were provided for those vehicles and because Taxpayer acknowledged the vehicles were not reported on the IFTA returns. Therefore, since no new fuel receipts were provided in the protest process, no "tax paid credit" will be allowed and the Department's methodology will not be revised.

B. Taxpayer's Objections to the Ten-Percent Penalty and the Department's response.

In addition to the adjustments addressed above, Taxpayer asks for abatement of the ten-percent penalty. Taxpayer explains as follows:

> [T]his is a first-time IFTA audit of [Taxpayer] and given the circumstances of the first-time audit coupled with the destruction of pertinent fleet-related records that would have been helpful in avoiding such a large IFTA assessment . . . [Taxpayer] believes a waiver of the negligence penalty is warranted for reasonable cause."

The Department issued IFTA assessments and the ten percent negligence penalty and interest for the tax year in question.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a negligence penalty if a taxpayer:

(1) fails to file a return for any of the listed taxes;
(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
(3) incurs, upon examination by the department, **a deficiency that is due to negligence**;
(4) fails to timely remit any tax held in trust for the state; or
(5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department. (**Emphasis added**).

45 IAC 15-11-2(b) further states:

> "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

The Department "shall" waive a negligence penalty when a taxpayer establishes that its failure to pay a tax was due to reasonable cause and not due to negligence. 45 IAC 15-11-2(c). The taxpayer must demonstrate that it exercised ordinary business care in carrying out or failing to carry out a duty giving rise to the penalty. Reasonable cause is fact sensitive and will vary based on the facts of each individual case.

In addition, the Department refers to IFTA Articles of Agreement, § R1220.100 (2017), which states:

> The base jurisdiction may assess the licensee a penalty of $50.00 or 10 percent of delinquent taxes, whichever is greater, for failing to file a tax return, filing a late tax return, underpaying taxes due.

Finally, IFTA Articles of Agreement, § R1260.100 (2017) provides:

> The **base jurisdiction commissioner may waive penalties authorized by this Article for reasonable cause**. If a licensee can demonstrate a tax return was filed late because of misinformation given to the carrier by the base jurisdiction, the interest may be waived for the base jurisdiction if the jurisdiction's statutes allow such a waiver. To waive interest for another jurisdiction, the base jurisdiction must receive written approval from the other jurisdiction. (**Emphasis added**).

Taxpayer failed to follow the record keeping requirements it voluntarily agreed to when it became part of IFTA. The Department does not agree that Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of establishing that the penalty assessment was wrong or that Taxpayer's inattention to its obligations under Indiana law was attributable to "reasonable cause." Even accepting Taxpayer's argument that some of its records were lost in a sewer accident, given circumstances under which this Taxpayer failed to maintain records and failed to provide records during the course of the audit, the Department concludes Taxpayer demonstrated a "disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations." 45 IAC 15-11-2(b).

FINDING

Taxpayer's protest is sustained in part and denied. Taxpayer is sustained on issues related to fuel consumed in reefer trucks and the reporting periods required for leased and rental vehicles. In all other respects, Taxpayer's protest is denied.

April 7, 2021

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